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NATO PARLIMENTARY ASSEMBLY

February 17, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Chair Gensler:

At your direction, on December 14, 2022, the Securities and Exchange Commission (the "SEC") issued a series of four proposals that would needlessly overhaul U.S. equity market structure.[1] I find each of these proposals deeply concerning, given the irreparable harm they will likely cause millions of investors, entrepreneurs, and small companies across the country. However, I write today with a particular focus on your proposal to force retail investors' orders into qualified auctions. If finalized in its current form, this rule would prevent market makers and other counterparties from executing broad swaths of trades, particularly in thousands of smaller, less actively traded companies.[2]

When smaller companies go public, they often struggle to maintain secondary market liquidity in their stocks, which hinders their potential and, in some cases, even threatens their survival. The SEC's experimental equity market structure rule proposals risk exacerbating this problem by further reducing liquidity for smaller, less actively traded stocks.

Small companies already face significant challenges, such as high inflation and a struggling economy, brought on by the disastrous spending policies of the Biden Administration and Democrats in Congress. The last thing small companies need is for the SEC to unnecessarily break well-functioning markets and make it more difficult for them to go and stay public. Unfortunately, that is exactly what the SEC's ill-advised proposals would do.

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[1] Among these proposed rules are: (1) Regulation Best Execution; (2) the Order Competition Rule; (3) Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better
Priced Orders; and (4) Disclosure of Order Execution Information. See, e.g., SEC Proposals Related to Market Structure, Press Release, Dec. 14, 2022, available at, https://www.sec.gov/newsroom/market-structure-proposals-december-2022.

[2] *See*, e.g., SEC Proposed Order Competition Rule Proposal, Release No. 34-96495, Dec. 14, 2022 ("Auctions Proposal").

This overly complex and misguided proposal (along with the SEC's other proposals related to equity market structure) will further reduce liquidity and investor interest in such companies.[3] With less liquidity and investor interest, smaller companies will have fewer opportunities to access the capital they need to grow and remain publicly traded.[4] This unfortunate, but predictable, outcome directly undermines the purpose and operation of the *bipartisan* Jumpstart Our Business Startups (JOBS) Act of 2012, which created a viable on-ramp for small companies to access the public markets to grow their businesses, create jobs, and drive economic growth. Rather than increasing burdens on small public companies, the SEC should instead join Republicans on the House Financial Services Committee in building on the JOBS Act's success to make it easier for all businesses to raise capital and maintain the liquidity necessary to thrive.[5]

In addition, the SEC issued the auction proposal despite a paltry one-page analysis on the economic effects to capital formation – a thinly researched and inadequate attempt to consider the proposed rule's impact.[6] At the same time, the SEC acknowledged the likelihood that its proposal could harm market liquidity, stating that "there could be a general lack of interest from liquidity suppliers to participate in a qualified auction."[7] It continued that, for "less liquid securities . . . there may be a higher chance that no liquidity suppliers bid in the auctions."[8] Still, the SEC expects asset managers and other non-market makers to provide consistent liquidity in these stocks, which is wishful thinking and ill-advised.

Similarly, the SEC acknowledges, but seems to ignore, the likely reduction in execution quality brought by the proposed auction rule.[9] The SEC's apparent disinterest, and lack of real analysis, in addressing the expected impacts on issuer liquidity, execution quality, and capital formation, among other costs, is unacceptable for any serious government agency.

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[3] Securities and Exchange Commission Statement on Market Structure Innovation for Thinly Traded Securities, Oct. 17, 2019 ("Commission Statement"), (stating that, "A lack of readily available liquidity … may discourage potential market makers from electing to make markets" and that, "a thinly traded security could affect a potential investor's willingness to invest in that issuer's securities, possibly resulting in even fewer trades."), *available at* https://www.sec.gov/rules/policy/2019/34-87327.pdf.

[4] *See* Commission Statement (finding that, "The secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers. … Having a less liquid security also could negatively affect an issuer's financing (e.g., the cost of capital).").

[5] See, e.g., House Financial Services Committee Republican Staff Report, Ten Years of the Jumpstart Our Business Startups (JOBS) Act of 2012, (summarizing the JOBS Act, its success, and policies aimed at improvement), *available at* https://financialservices.house.gov/uploadedfiles/jobs_act_at_10_report_final.pdf.

[6] See Auctions Proposal at 331.

[7] See id. at 285; 354-55.

[8] See id.

[9] See id. at 203 ("[W]holesalers appear to provide retail brokers with a high degree of consistency with regard to execution quality."); at 284-85 ("The Commission is cognizant of concerns regarding the possibility of a decline in execution quality due to the implementation of qualified auctions.").

Instead, the SEC's rulemaking experiment appears heavily influenced by ideological preferences, which favor certain market participants over others. This approach will harm smaller and less actively traded companies that are likely to see declines in liquidity. As a result, small companies, investors, and the quality of our capital markets may suffer, ultimately hampering job creation and economic growth. It is not the government's role to pick winners and losers among issuers or investors, but that is exactly what you are proposing to do.

Please respond to the following questions no later than March 6, 2023:

1. Please identify the section(s) of the auction rule proposal where the SEC has analyzed the potential impacts of the rule on liquidity for all types of securities, including less actively traded stocks. To the extent you are able to identify such section(s), provide the data and analysis underlying the SEC's conclusions. If the identified section(s) are not available, please explain why.

2. Describe in detail the potentially negative impacts the current auctions proposal would have on capital formation, including but not limited to small business both private and public, and specify what page(s) of the proposal currently contain this discussion. If no such potentially negative impacts are identified or described in the auctions rule proposal, explain why.

3. Describe in detail all negative impacts on liquidity that may result from adopting the current auctions rule proposal, including the likelihood that the proposal will reduce liquidity and lead to higher prices for less actively traded stocks, if not all stocks. Please provide any data and analysis used to justify the SEC's conclusions.

4. Despite Congress, the SEC, and market participants reviewing and debating the structure of U.S. equity markets for decades, intraday auctions for retail stock trades have not been seriously considered as a solution to any alleged problem. This suggests that the auctions rule proposal may have been developed without input from experienced individuals in the provision of market liquidity or the execution of equity orders. Please confirm whether this is an accurate characterization of the origins of the auctions proposal. If not, please provide a detailed account of how this idea was developed.

Sincerely,

Ann Wagner

Ann Wagner
Chairman
Subcommittee on Capital Markets